

STATE OF MICHIGAN
IN THE SUPREME COURT

CITY OF MONROE, *OK*

Plaintiff/Appellant,

v

HELEN FAITH JONES,

Defendant/Appellee.

Supreme Court Case No:
Court of Appeals Case No: 241486
Circuit Court Case No: 01-13988-AV

Open 11/18/03

*Monroe
M. Lubeau*

NOTICE OF HEARING

**PLAINTIFF/APPELLANT, CITY OF MONROE'S,
APPLICATION FOR LEAVE TO APPEAL**

**NOVEMBER 30, 2001, TRANSCRIPT OF DISTRICT
COURT HEARING**

**APRIL 19, 2002, CIRCUIT COURT TRANSCRIPT OF ORAL
ARGUMENT ON APPEAL**

NOVEMBER 30, 2001, DISTRICT COURT JUDGMENT

DISTRICT COURT OPINION OF DECEMBER 14, 2000

CIRCUIT COURT DECISION AND ORDER OF APRIL 30, 2002

**COURT OF APPEALS PUBLISHED DECISION OF
NOVEMBER 18, 2003**

PROOF OF SERVICE

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MICHIGAN SUPREME COURT

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TABLE OF CONTENTS

Table of Authorities	iii
Statement Identifying Order Appealed From and Relief Sought	iv
Jurisdictional Statement	v
Statement of Question Presented	vi
Statement of Facts	1-5

Argument I

THE MICHIGAN VEHICLE CODE REQUIRES A PERSON TO COMPLY WITH POSTED SIGNS THAT RESTRICT THE PERIOD OF TIME PERMITTED FOR PARKING EVEN THOUGH THE PERSON'S PARKED VEHICLE DISPLAYS A VALID DISABLED PARKING DESIGNATION. DEFENDANT HAS A SUCH A DISABLED PARKING DESIGNATION BUT REFUSED TO COMPLY WITH THE ONE HOUR TIME LIMITATION IN THE CITY OF MONROE RESULTING IN DEFENDANT RECEIVING OVER 200 PARKING TICKETS. DID THE DISTRICT COURT AND CIRCUIT COURT, SITTING AS AN APPELLATE COURT, CORRECTLY DETERMINE THAT THE CITY OF MONROE IS ENTITLED TO ENFORCE ITS PARKING ORDINANCE AND COLLECT THE FINES AND COSTS ASSOCIATED WITH THE PARKING TICKETS ISSUED TO DEFENDANT HELEN FAITH JONES?	6-17
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A. Standard of Review	6
B. Legal Argument	6-17

Relief Requested	18
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Proof of Service

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>Beaudrie v Henderson</i> , 465 Mich 124, 129 (2001)	6
<i>Cady v Detroit</i> , 289 Mich 499 (1939)	9
<i>City of Detroit v Recorders Judge</i> , 104 Mich App 214, 232 (1981)	9
<i>Conroy v Battle Creek</i> , 314 Mich 210; 22 NW2d 275 (1946)	10
<i>Detroit v Walker</i> , 445 Mich 682, 690; 520 NW2d 135 (1994)	10
<i>Fass v Highland Park</i> (on Rehearing), 321 Mich 156, 161 (1948)	9
<i>Indenbaum, M.D. v Michigan Board of Medicine</i> , 213 Mich App 263, 274 (1995)	13
<i>King v Director of Midland County Dept. Of Social Services</i> , 73 Mich App 253 (1977)	17
<i>Ludington and N.R. Co. v Epworth Assembly</i> , 188 Mich App 25, 40 (1991)	12
<i>Oakland County Board of Road Commissioners v</i> <i>Michigan Property & Casualty Guaranty Ass'n</i> , 456 Mich 590, 610 (1998)	6
<i>People v Burton</i> , 87 Mich App 598 (1978)	17
<i>Rental Property Owners Ass'n of Kent County v</i> <i>City of Grand Rapids</i> , 455 Mich 246, 257 (1997)	9
<u>Statutes/Court Rules/Other Authority</u>	
Home Rule Cities Act, MCL 117.1 <i>et seq.</i>	10, 16
MCR 7.301(A)(2)	5

MCR 7.302(C)(2)	5
MCL 257.605	7, 16
MCL 257.606	7, 13, 14, 15
MCL 257.674	4, 8, 13, 15
MCL 257.675(6)	v, 1, 3, 4, 5, 6, 9, 15, 16
MCL 257.675(8)	4, 13
MCL 257.675(9)	4, 13
MCL 257.951	1, 14, 16, 17
MCR 2.116(C)(10)	6
MSA 5.2071 <i>et seq</i>	10
MSA 5.2083(3)	10
MSA 9.2305	7
MSA 9.2306	7
MSA 9.2374	8
Michigan Constitution. Const. 1963 Art. 7, § 22	10, 16
Sections 460.13, 460.15 and 460.05(c)(15) of the Qualified Ordinances of the City of Monroe	3
2000 Mich OAG No. 7041, 2000 WL 216 588 (Mich A.G.), released February 18, 2000	10

STATEMENT IDENTIFYING ORDER APPEALED

FROM AND RELIEF SOUGHT

Appellant City of Monroe is appealing the Court of Appeals published decision of November 18, 2003, reversing the circuit court's judgment. Appellant City of Monroe is seeking a reversal of the Court of Appeals determination that parking citations issued to the defendant for violating the one-hour limitation on parking pursuant to a City ordinance were invalid. The Court of Appeals concluded that the City was precluded from ticketing defendant under the City ordinance which was not contemplated by MCL 257.675(6) as constituting an exception to the liability exemption for disabled persons.

Appellant requests that this Court reinstate the Circuit Court judgment.

JURISDICTIONAL STATEMENT

This Court has jurisdiction to consider this application for leave to appeal based on MCR 7.301(A)(2). The Court of Appeals published opinion was released on November 18, 2003. This application is being filed within 42 days of the Court of Appeals decision and, therefore, this Court has jurisdiction to consider this application. MCR 7.302(C)(2).

STATEMENT OF QUESTION PRESENTED

I THE MICHIGAN VEHICLE CODE REQUIRES A PERSON TO COMPLY WITH POSTED SIGNS THAT RESTRICT THE PERIOD OF TIME PERMITTED FOR PARKING EVEN THOUGH THE PERSON'S PARKED VEHICLE DISPLAYS A VALID DISABLED PARKING DESIGNATION. DEFENDANT HAS A SUCH A DISABLED PARKING DESIGNATION BUT REFUSED TO COMPLY WITH THE ONE HOUR TIME LIMITATION IN THE CITY OF MONROE RESULTING IN DEFENDANT RECEIVING OVER 200 PARKING TICKETS. DID THE DISTRICT COURT AND CIRCUIT COURT, SITTING AS AN APPELLATE COURT, CORRECTLY DETERMINE THAT THE CITY OF MONROE IS ENTITLED TO ENFORCE ITS PARKING ORDINANCE AND COLLECT THE FINES AND COSTS ASSOCIATED WITH THE PARKING TICKETS ISSUED TO DEFENDANT HELEN FAITH JONES?

Plaintiff-Appellant, City of Monroe says: "Yes."

Defendant-Appellee says: "No."

The District Court said: "Yes."

The Circuit Court said: "Yes."

The Court of Appeals said: "No."

STATEMENT OF FACTS

A. OVERVIEW.

This case involves the City of Monroe's ability to enforce its local parking ordinance restricting parking to one hour in certain areas of the City. As the issues developed, the question became whether the City was authorized to issue parking violations under its local ordinance in light of MCL 257.675(6). The Court of Appeals felt that statute prohibited the City from ticketing the defendant for parking violations under its local ordinance. It was undisputed that the City of Monroe is a home rule city pursuant to the Michigan Constitution Art. 7, § 22, and MCL 117.1 et. seq. Additionally, it is undisputed that based on the enabling legislation of MCL 257.951, the City of Monroe adopted the Uniform Traffic Code as well as the Michigan Motor Vehicle Code. Nevertheless, the Michigan Court of Appeals found that the tickets issued to Ms. Jones, who is a disabled driver, are unenforceable because they were not issued for violating the Michigan Motor Vehicle Code, and correspondingly, reversed the circuit court's judgment.

Accordingly, under the Court of Appeals' determination, City ordinances could never be enforced against disabled persons regarding parking limitations for a City that has through enabling legislation, adopting the Michigan Vehicle Code and the Uniform Traffic Code.

Hence, the issue involves legal principles of major significance to the State's jurisprudence. The effect of the Court of Appeals' decision is to nullify all local parking ordinances to the extent that they are applicable to disabled individuals.

B. FACTUAL BACKGROUND.

The facts giving rise to this matter are undisputed.

Appellee Helen Jones is afflicted with multiple sclerosis. (See decision and order of the Monroe County Circuit Court of April 30, 2002, p. 1, hereinafter referred to as "Opinion.") Ms.

Jones is employed with the Salvation Army Harbor Light in Downtown Monroe, Michigan. (Opinion, p. 1.) She commutes to her employment from her home in Toledo, Ohio. At all pertinent times, plaintiff lived in Ohio and her driver's license and license plate were from Ohio. (See Court of Appeals Opinion, p. 1.) The defendant had a disability placard from Ohio in her vehicle. (Court of Appeals Opinion, p. 1.)

The City of Monroe's downtown business area contains on-street parking spaces. (Opinion, p. 1.) All these spaces have unmetered parking, but a city ordinance prohibits parking at those spaces for greater than one hour. (Opinion, p.1.) Correspondingly, signs are posted notifying drivers of the time restriction. (Opinion, p. 1.) A time limitation order was issued by the City traffic engineer with the approval of the Mayor and the Monroe City Council. (Opinion, p. 1.)¹

The parking spaces along Front Street in Downtown Monroe are the closest available spaces to the entrance of the Harbor Light building where plaintiff is employed. (Opinion, p. 1.)²

Appellee Jones parked in the Front Street spaces, designated for the disabled, for longer than the one-hour time limitation despite the parking signs designating those parking spaces as "1 hour parking." (Opinion, p. 2.)

In September 2000, the City began ticketing the Appellee for violation of the local ordinance, ultimately resulting in issuance of 203 parking violation tickets. (Opinion, p. 2.)

The City brought the matter before the Monroe District Court in December 2000 to enforce, and to reduce to a judgment, the fines and costs associated with defendant's violation of the one-hour

¹Parenthetically, this order was issued to provide for greater consumer access and increased business activity in the downtown area by assuring higher patron turnover and accessibility. (Opinion, p. 1.)

²The business district of Monroe is small with limited parking available. The three city blocks comprising the business district require that all parking spaces be regulated by time restrictions, including those designated as handicapped spaces. (See, December 14, 2000, Opinion of District Court, p. 3.)

traffic ordinance. In response, Jones contended that the State of Michigan, specifically by way of MCL 257.675(6), pre-empted the City from placing time limits at parking spaces reserved for disabled persons bearing appropriate vehicle placards.

In an opinion and order dated December 14, 2000, the Monroe District Court, the Honorable Terrence P. Bronson presiding, found the parking tickets were not in violation of the Michigan statute. The district court proceedings were then stayed at Judge Bronson's discretion and in October 2001, the City renewed efforts to enforce the parking tickets against Ms. Jones. (See Opinion, p. 2.) Once again, Ms. Jones argued that the state law pre-empted the City from enforcing its one-hour time limit for persons utilizing disability parking spaces. *Id.*

But an order granting judgment against Ms. Jones was entered by Judge Bronson on November 30, 2001, ordering her to pay fines and costs in the amount of \$5,075.00. As part of its ruling, the district court found that approximately 107 of the tickets were issued for first offense violations, with the remaining 96 issued for second and subsequent violations in a 24-hour period based on Sections 460.13, 460.15 and 460.05(c)(15) of the Qualified Ordinances of the City of Monroe. (See Opinion, p. 2.) Per those ordinances, fines for the first violation were established at \$5.00 per violation, while fines for second and subsequent offense violations were established at \$25.00 per violation. In the November 30, 2001, district court decision, the court imposed a \$5.00 per violation fine for both first and second violations of the ordinances. Hence, the judgment reduced the total fine from \$2,935.00 to \$1,015.00, a difference of \$1,920.00. (See Opinion, p. 2.)³

Defendant then filed an appeal with the Monroe County Circuit Court. The City of Monroe cross-appealed regarding the district court's decision to reduce the amount of fines for second and

³No payments have been made concerning the fines.

subsequent offenses.

Once again, the defendant maintained that MCL 257.675(6) pre-empted the City from enforcing its one-hour ordinance against disabled persons. As a second ground for the appeal, defendant maintained that the City of Monroe's one-hour parking ordinance failed to comply with the "official sign" requirement of MCL 257.674(1)(w). In an opinion dated April 30, 2002, the Monroe County Circuit Court rejected both grounds.

First, the circuit court found that the preemption doctrine was inapplicable to the ordinance at issue. The basis of that finding was MCL 257.675(9) which states that all persons not eligible for free parking under MCL 257.675(8), "shall pay all parking fees and may be responsible for a civil infraction."

Ruling on the defendant's claim that the one-hour parking ordinance sign failed to comply with the "official sign" requirement of MCL 257.674(1)(w), the circuit court held that the statute had been complied with by the City when it enacted the one-hour time limitation.

Regarding the City of Monroe's cross-appeal, the circuit court reversed the district court, finding that the district court abused its discretion by making an 80% reduction (from \$25.00 to \$5.00) of the civil fine for second and subsequent parking offenses. This was based on the explicit language of the codified ordinance of the City of Monroe, §460.05. Therefore, the circuit court affirmed the district court's decision in part and reversed in part, remanding for entry of an order imposing a fine of \$25.00 for every second and subsequent offense. (See circuit court opinion, pp. 9-10.)⁴

Defendant filed a delayed application for leave to appeal with the Michigan Court of Appeals

⁴Defendant did not seek leave to appeal on this issue in the Court of Appeals, however.

which was granted in order entered on October 9, 2002.

Following additional briefing, the Michigan Court of Appeals held oral argument on November 13, 2003. The Court issued its “for publication” opinion on November 18, 2003 agreeing with the defendant that MCL 257.675(6) relieves a disabled person, with the appropriate placard, from liability for a parking violation. Further, the Court of Appeals rejected The City of Monroe’s contention that the exception under 675(6) relating to whether the person violated “this act” was applicable because defendant was not cited for violating § 674 (of the Michigan Motor vehicle code) – she was issued parking citations for violating a local time-restriction parking ordinance.⁵

Defendant is requesting this Court reverse the Court of Appeals determination and reinstate this Circuit Court’s ruling as more fully explained in the brief.

⁵The Court of Appeals did not rule on Defendant’s “official sign” requirement argument, concluding the issue was not before the Court because Defendant was not cited for an official sign violation under MCL 674(1)(w). (Court of Appeals Opinion, p. 4, fn. 2.)

ARGUMENT I

I THE MICHIGAN VEHICLE CODE REQUIRES A PERSON TO COMPLY WITH POSTED SIGNS THAT RESTRICT THE PERIOD OF TIME PERMITTED FOR PARKING EVEN THOUGH THE PERSON'S PARKED VEHICLE DISPLAYS A VALID DISABLED PARKING DESIGNATION. DEFENDANT HAS A SUCH A DISABLED PARKING DESIGNATION BUT REFUSED TO COMPLY WITH THE ONE HOUR TIME LIMITATION IN THE CITY OF MONROE RESULTING IN DEFENDANT RECEIVING OVER 200 PARKING TICKETS. DID THE DISTRICT COURT AND CIRCUIT COURT, SITTING AS AN APPELLATE COURT, CORRECTLY DETERMINE THAT THE CITY OF MONROE IS ENTITLED TO ENFORCE ITS PARKING ORDINANCE AND COLLECT THE FINES AND COSTS ASSOCIATED WITH THE PARKING TICKETS ISSUED TO DEFENDANT HELEN FAITH JONES?

A. Standard of Review

This court reviews de novo a trial court's grant of summary disposition. *Beaudrie v Henderson*, 465 Mich 124, 129 (2001). A motion for summary disposition under MCR 2.116(C)(10) tests the factual basis underlying a claim. *Radtke v Everett*, 442 Mich 368, 364 (1993).

Also, this case involves statutory interpretation. Therefore, a question of law is presented which is subject to de novo review as well. *Oakland County Board of Road Commissioners v Michigan Property & Casualty Guaranty Ass'n*, 456 Mich 590, 610 (1998).

B. Legal Argument

Agreeing with the Plaintiff, the Court of Appeals concluded that MCL 257.675(6) pre-empts the City of Monroe from enforcing its municipal parking ordinance against disabled persons such as the defendant. That statutory provision at issue provides:

“257.675. Parking regulations

- (6) A disabled person with a certificate of identification, windshield placard, special registration plates issued under section 803d, a special registration plate issued under section

803f that has a tab for person with disabilities attached, a certificate of identification or windshield placard from another state, or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle. **The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in violation of this act.** A local authority may by ordinance prohibit parking on a street or highway to create a fire lane or to provide for the accommodation of heavy traffic during morning and afternoon rush hours, and the privileges extending to veterans and physically disabled persons under this subsection do not supercede that ordinance.” [Emphasis added.]

Defendant (and the Court of Appeals decision) relied on the portion of the statute that states, “The courtesy shall relieve the disabled person . . . from liability for a violation” of the parking ordinances – in effect, giving the defendant unlimited parking privileges in the one-hour time-limited zone.⁶

However, other pertinent statutory authority is necessary for resolution of the issue. This is reflected in the district court opinion:

“MCL 257.605; MSA 9.2305 mandates universality throughout the state in application of the traffic laws. Any local ordinance in conflict with State Law is void to the extent of the conflict.

“Certain powers are vested with local units of government. MCL 257.606; MSA 9.2306 provides in part:

‘(1) The provisions of this chapter shall not be considered to prevent local authorities with respect to streets or highways under the jurisdiction of the local authority and within reasonable exercise of the police power from:

(a) Regulating the standing or parking of vehicles.

⁶The word “courtesy” is not defined in the motor vehicle code.

‘(3) An ordinance or regulation enacted under subsection (1)(a), . . . shall not be enforceable until signs giving notice of the local traffic regulations are posted upon or at the . . . part of the highway or street affected, . . . The posting of signs giving the notice shall not be required for a local ordinance which does not differ from the provision of this act regulating the parking or standing of vehicle;’

“MCL 257.674; MSA 9.2374 further amplifies the police powers in the local unit of government:

‘(1) A vehicle shall not be parked, . . . in any of the following places:

(u) In violation of the official sign restricting the period of time for or manner of parking.’”

(December 14, 2000, District Court Opinion, p. 2.)

As the district court further observed in its opinion:

“There is nothing indicated in the Michigan Automobile Code [therefore] that indicates the State’s authority is to be exclusive. To the contrary, the State grants specific power to local units of government to regulate the time an automobile may remain parked in a parking space. Any reference to the parking of cars for disabled people seems to mandate observing certain spaces for those disabled people who drive. There is no reference in the vehicle code abolishing **time limits** at those spaces.” [Emphasis added.]

(December 14, 2000, Opinion of the District Court, p. 3.)

Hence, the State has not pre-empted the City of Monroe from enforcing

a one-hour time limitation.⁷

The doctrine of pre-emption provides that a municipal ordinance may not invade a field completely occupied by a State statute. *City of Detroit v Records Judge*, 104 Mich App 214, 232 (1981). Also, preemption occurs where the ordinance directly conflicts with the State statute. See, *Rental Property Owners Ass'n of Kent County v City of Grand Rapids*, 455 Mich 246, 257 (1997).

In *Rental Property Owners Ass'n*, *supra*, the Supreme Court further observed that ordinances exercising police powers are presumed to be constitutional, *Fass v Highland Park* (On Rehearing), 321 Mich 156, 161 (1948) and the burden is on the challenger to prove otherwise. *Cady v Detroit*, 289 Mich 499 (1939).

As correctly observed by both the district and circuit courts, the State statute which plaintiff and the Court of Appeals relied on, MCL 257.675(6), when analyzed in conjunction with other corresponding statutes, does not completely occupy the field that the Monroe ordinance attempts to regulate; nor does the ordinance directly conflict with MCL 257.675(6). Furthermore, home rule

⁷The sections of the codified ordinances of the City of Monroe addressing the issue of time-regulated parking state:

"460.13 PARKING IN UNMETERED AREAS.

No person shall park a vehicle in the unmetered areas of the City continuously for a period of more than one hour where one-hour parking limits are posted. No person shall move his or her vehicle from one unmetered one-hour parking space directly to another unmetered one-hour parking space within a two-block radius in order to circumvent the posted one-hour parking limit. Whoever violates this section shall be ticketed in accordance with Section 460.05.

460.14 ONE-HOUR PARKING ZONES.

Parking of motor vehicles shall be limited to one hour upon streets or parts thereof designated for such one-hour parking pursuant to Section 8.10(r) of the uniform Traffic Code, as adopted in Chapter 410, and/or Traffic Control Orders that are recommended by the Traffic Committee and adopted by the Mayor and Council."

cities, such as the City of Monroe, have broad powers to enact ordinances for the benefit of municipal concerns under the Michigan Constitution. Const. 1963 Art. 7, § 22 which provides:

‘Under general laws the electors of each city and village shall have the power and authority to frame, adopt and amend its charter, and to amend an existing charter of the city or village heretofore granted or enacted by the legislature for the government of the city or village. Each such city and village shall have power to adopt resolutions and ordinances relating to its municipal concerns, property and government, subject to the constitution and law. No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.’

Art 7, § 34 of the Michigan Constitution also provides:

‘The provisions of this constitution and law concerning counties, townships, cities and villages shall be liberally construed in their favor.’

The authority of home rule cities to enact and enforce ordinances is further defined by the Home Rule Cities Act, MCL 117.1 *et seq.*; MSA 5.2071 *et seq.*:

“Each city may in its charter provide: (3) For the exercise of all municipal powers in the management and control of municipal property and in the administration of the municipal government, whether such powers be expressly enumerated or not; for any act to advance the interests of the city, the good government and prosperity of the municipality and its inhabitants and through its regularly constituted authority to pass all laws and ordinances relating to its municipal concerns subject to the constitution and general laws of this state. [MCL 117.4j(3); MSA 5.2083(3).]”

The Home Rule Cities Act is intended to give cities a large measure of home rule. It grants general rights and powers subject to enumerated restrictions. *Detroit v Walker*, 445 Mich 682, 690; 520 NW2d 135 (1994); *Conroy v Battle Creek*, 314 Mich 210; 22 NW2d 275 (1946).

Moreover, the Michigan Attorney General released an opinion addressing the identical issue raised by the Defendant in this matter in 2000 Mich OAG No. 7041, 2000 WL 216 588 (Mich A.G.), released February 18, 2000. There, then Attorney General, Jennifer Granholm, was asked by State Representative Richardville:

“Does the Michigan Vehicle Code require a person to comply with posted signs that restrict the period of time permitted for parking even though the person’s parked vehicle displays a valid disabled parking designation.”

The Attorney General found that indeed the Michigan Vehicle Code requires a disabled person to comply with posted signs that restrict the period of time permitted for parking. The Representative’s inquiry was regarding a Michigan City with a downtown business area of approximately three city blocks. The area contained approximately 85 on-street parking spaces, none of which used parking meters. Four of the spaces were restricted to handicapped parking but did not restrict the amount of time an eligible person could park. In order to facilitate customer access to the downtown businesses, the remaining parking spaces were posted with signs limiting parking to one-hour. What occurred in the unnamed Michigan city (which is in fact the City of Monroe) was that persons whose vehicles displayed valid disabled parking license plates or placards began to park in those time-limited spaces for longer than the posted one-hour limit. The State Representative asked whether these persons could be ticketed for noncompliance with the posted time limits despite the disabled plates or placards displayed on their vehicles.

In answering the inquiry, the Attorney General specifically acknowledged 675(6) and opined:

“Section 675(6) specifically exempts disabled person from liability for parking violations except for those offenses which are a violation of the Code itself.

“A disabled person with a certificate of identification, windshield placard, special registration plates issued under section 803d, a special registration plate issued under section 803f that has a tab for persons with disabilities attached, a certificate of identification or windshield placard from another state, or special registration plates from another state issued for persons with disabilities is entitled to courtesy in the parking of a vehicle. The courtesy shall relieve the disabled person or the person transporting the disabled person from liability for a violation with respect to parking, other than in violation of this act. (Emphasis added.)

“Section 674 of the Code lists several specific parking practices that are prohibited by the Code. Among these prohibited practices is parking a vehicle ‘[i]n violation of the official sign restricting the period of time for or manner of parking.’ Section 674(1)(u). **Thus, parking in excess of the time permitted by a posted sign is a violation of the Code, and is not within the ‘courtesy’ extended to disabled persons by section 675(6) of the Code.** [Emphasis added.]

“This result is consistent with other related provisions of the Code. For example, section 674(1)(v) of the Code prohibits parking ‘[i]n a space controlled or regulated by a meter . . . if the allowable time for parking indicated on the meter has expired . . . ,’ but creates an exception for vehicles that display a special free parking sticker obtained under section 675(8) of the Code. Significantly, these parking stickers are not available to disabilities that make it difficult or impossible for the individual to use a parking meter. [Footnote omitted.] While the Legislature has seen fit to include this limited exception in section 674(1)(v) of the Code for at least some disabled drivers who park at metered spaces, it has included no similar exception in section 674(1)(u) for disabled drivers who park in spaces that are posted with time limitations.

“It is my opinion, therefore, that the Michigan Vehicle Code requires a person to comply with posted signs that restrict the period of time permitted for parking even though the person’s parked vehicle displays a valid disabled parking designation.”

While an opinion of the Attorney General is not precedentially binding, it can be persuasive authority. See *Ludington and N.R. Co. v Epworth Assembly*, 188 Mich App 25, 40 (1991); lv den

439 Mich 934 (1992) and *Indenbaum, M.D. v Michigan Board of Medicine*, 213 Mich App 263, 274 (1995); lv den 454 Mich 880 (1997).

Furthermore, while MCL 257.675(8) provides to free parking in a metered space or publicly owned parking structure or area for a vehicle displaying an appropriate statutorily required placard, MCL 257.675(9) further prescribes that all persons not eligible for free parking under MCL 257.675(8), “shall pay all parking fees and may be responsible for a civil infraction.” Hence, 675(9) illustrates the legislature’s intent to hold all operators of motor vehicles liable for any valid parking regulation; i.e., even though they are entitled to park for free, they are not entitled to violate the law. In other words, the disabled individual is not exempted from time-regulated parking, which is consistent with the Attorney General’s opinion.

Other provisions of the Michigan Motor Vehicle Code make it plain that the local ordinance at issue in this matter was enforceable against disabled individuals by the City of Monroe.

MCL 257.674(1)(w) provides the following:

“257.674. Prohibited parking

Sec. 674. (1) A vehicle shall not be parked, except if necessary to avoid conflict with other traffic or in compliance with the law or the directions of a police officer or traffic-control device, in any of the following places:

(w) In violation of an official sign restricting the period of time for or manner of parking.”

MCL 257.606, states in pertinent part:

257.606. Local authorities; police powers for control of traffic; impounding vehicles

Sec.606. (1) The provisions of this chapter shall not be considered to prevent local authorities with respect to streets or highways under

the jurisdiction of the local authority and within the reasonable exercise of the police power from:

- (a) Regulating the standing or parking of vehicles.”

Hence, by state statute, namely MCL 257.606, the state has given police power for control of traffic (including standing and parking of vehicles) to local authorities. The provisions of the motor vehicle code “shall not be considered to prevent local authorities with respect to streets or highways under their jurisdiction” from regulating the standing or parking of vehicles.

Also, the circuit court found the City of Monroe adopted the Uniform Traffic Code (UTC) on July 13, 1981. The enabling legislation regarding the adoption by a city, township or village of the Uniform Traffic Code is found in MCL 257.951. MCL 257.951 provides in pertinent part:

“257.951. Uniform traffic code; promulgation, adoption, contracts to enforce on private property, misdemeanors, handicapped parking signs, driving while under the influence or with impaired ability, etc.

“Sec. 1. (1) A city, township, or village may adopt by reference a code or ordinance for the regulation of traffic within cities, townships, and villages that has been promulgated by the director of the department of state police. The director of the department of state police may promulgate a uniform traffic code pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

“ (2) A city, township, or village, with the consent of, or at the request of, a person who is in charge of a private road or parking lot, whether or not that road or parking lot is open to the general public, may contract with that person for the city, township, or village to enforce provisions of the uniform traffic code or ordinance adopted under this section on that private road or parking lot. As used in this subsection, ‘person’ means an individual, corporation, association, partnership, or other legal entity.”

On September 18, 2000, the City of Monroe adopted the Michigan Vehicle Code in addition

to the UTC.

Section 8.24 of the UTC, as acknowledged by the circuit court, provides that no parking time limit will be effective unless appropriate signs giving notice of the time limit, or prohibited parking, are erected and in place at the time of the any alleged offense. The circuit court then referenced MCL 257.606, *supra*.

Section 2.53 of the Uniform Traffic Code, as recognized by the Circuit Court, provides that traffic control orders become effective when filed the clerk, and upon erection of adequate signs giving notice of the existing regulation. The evidence in the lower courts demonstrated that the traffic control orders at issue in this case were approved by the Mayor and City Counsel on June 5, 2000; they were signed by the City of Monroe's traffic engineer on June 6, 2000; and filed with the Clerk of the City of Monroe on June 7, 2000.

Addressing the Court of Appeals opinion, the court identified the issue of whether the exceptions under § 675(6) are applicable. (Court of Appeals Opinion, p. 3.) One of the exceptions the Court noted was where the disabled person violated "this act," or in other words, "where the disabled person violated the vehicle code." (Court of Appeals Opinion, p. 3.) The Court then referenced MCL 257.674(1)(w) and (4) which restricts parking based on time limitations. The Court of Appeals found that this section was inapplicable because "the citations that are contained in the record do not indicate that they were issued pursuant to the Vehicle Code, nor does plaintiff argue that the citations were issued pursuant to the Code." (Court of Appeals Opinion, p. 4.) Because defendants' citations were not issued pursuant to the other exceptions found in MCL 257.675(6) (with respect to the liability exception for disabled persons) prohibiting parking on a street to create a fire lane or for providing for the accommodation of heavy traffic during morning and afternoon rush

hours,) the Court concluded that MCL 257.675(6) “clearly and unambiguously precludes plaintiff from citing defendant, a disabled person, for a time-restriction parking violation under the local ordinance.” (Court of Appeals Opinion, p. 4.) In reaching its conclusion, the Court cited the statutory construction rule that “the express mention in a statute of one thing implies the exclusion of other similar things.” (Court of Appeals Opinion, p. 4.)

The Court of Appeals rejected the City’s contention that it had the constitutional authority to adopt local ordinances that restrict the time a vehicle is parked in any particular parking space based on Constitution 1963, Art. 7, § 22, MCL 257.605 and .606, the Home Rule City Act, MCL 117.1, et seq. While “agreeing that plaintiff has the authority to enact time-restriction parking ordinances” the Court of Appeals held that authority is not absolute and unfettered and must give way to a specific statutory provision that places a limit on that authority. (Court of Appeals Opinion, p. 5.)

Finally, the Court of Appeals rejected any contention that § 675(6)’s reference to the Vehicle Code, and specifically § 674, means that a parking citation predicated on violation of a time-restriction does not exempt a disabled person from liability regardless of the mechanism through which the municipality seeks enforcement, i.e., an ordinance or state statute. (Court of Appeals Opinion, p. 6.) However, the Court of Appeals failed to acknowledge the enabling legislation reflected in MCL 257.951 regarding the adoption by a city, township or village of the Uniform Traffic Code which was adopted by Monroe on July 13, 1981. Once more, as stated, on September 18, 2000, the City of Monroe adopted the Michigan Vehicle Code in addition to the UTC. Hence, the local ordinance was authorized by statutory authority and the ordinance reflects the Michigan Vehicle Codes parking restrictions.

The fact that the defendant was ticketed under a local ordinance instead of directly through the Michigan Vehicle Code is immaterial where the local ordinance was promulgated through State statute authorizing authority. Indeed, MCL 257.951 is part of the Michigan Vehicle Code. As such, the enabling legislation reflected in that statutory provision would fall into the statutory exception language of 675(6) for “violations of this act.”

The effect of the Court of Appeals decision then is to nullify all local parking ordinances (and arguably any other traffic control ordinances) as they apply to disabled individuals. Such a result is contrary to the other statutory rule of construction that statutes are to be construed so as to avoid absurd consequences. *King v Director of Midland County Dept. Of Social Services*, 73 Mich App 253 (1977); and *People v Burton*, 87 Mich App 598 (1978).

RELIEF REQUESTED

Based on the foregoing, Plaintiff-Appellant, the City of Monroe, respectfully requests that this Court grant its application for leave to appeal and either preemptorily, or upon final review, reverse the Court of Appeals determination and reinstate the circuit court's judgment together with any and such further relief as this Court deems necessary and just.

Respectfully submitted,

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